

JUDGE SCHOFIELD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

13 CV 6780

TRUSTEES OF THE NEW YORK CITY DISTRICT
COUNCIL OF CARPENTERS PENSION FUND,
WELFARE FUND, ANNUITY FUND, and
APPRENTICESHIP, JOURNEYMAN RETRAINING,
EDUCATIONAL AND INDUSTRY FUND, TRUSTEES
OF THE NEW YORK CITY CARPENTERS RELIEF
AND CHARITY FUND, and THE NEW YORK CITY
AND VICINITY CARPENTERS LABOR-
MANAGEMENT CORPORATION,

Plaintiffs,

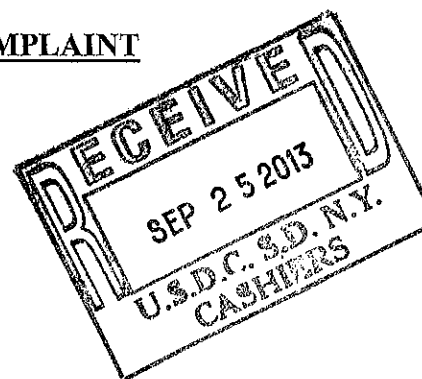
-against-

M S G CONSULTANTS, INC. d/b/a ALBA GENERAL
CONTRACTORS, MARTIN SHKRELI d/b/a ALBA
CONSTRUCTION CO., and ALBA GROUP, INC. d/b/a
ALBA CONSTRUCTION CO.,

Defendants.

13 CV _____

COMPLAINT



Plaintiffs, by and through their attorneys, Virginia & Ambinder, LLP, as and for their
Complaint, respectfully allege as follows:

NATURE OF THE ACTION

1. This is a civil action under section 502(a)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1132(a)(3); section 301 of the Labor Management Relations Act of 1947 ("LMRA"), as amended, 29 U.S.C. § 185; to collect delinquent employer contributions to a group of employee benefit plans, and for related relief.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1367, and 29 U.S.C. §§ 185 and 1132(e)(1).

3. Venue is proper in this Court pursuant to 29 U.S.C. § 1132(e)(2) because the ERISA Funds (as defined below) are administered in this district.

THE PARTIES

4. Plaintiffs Trustees of the New York City District Council of Carpenters Pension, Welfare, and Annuity, Apprenticeship, Journeyman Retraining, Educational and Industry Funds (the “ERISA Funds”) are employer and employee trustees of multiemployer labor-management trust funds organized and operated in accordance with ERISA. The Trustees are fiduciaries of the ERISA Funds within the meaning of section 3(21) of ERISA, 29 U.S.C. § 1002(21). The ERISA Funds maintain their principal place of business at 395 Hudson Street, New York, New York 10014.

5. Plaintiffs Trustees of the New York City District Council of Carpenters Relief and Charity Fund (the “Charity Fund”)(together, the ERISA Funds and the Charity Fund shall be referred to as the “Funds”) are Trustees of a charitable organization established under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3). The Charity Fund maintains its principal place of business at 395 Hudson Street, New York, New York 10014.

6. Plaintiff New York City and Vicinity Carpenters Labor-Management Corporation is a New York not for profit corporation, and maintains its principal place of business at 395 Hudson Street, New York, New York 10014.

7. M S G Consultants, Inc. (“MSG”) is a corporation incorporated under the laws of the State of New York. At relevant times, MSG was an employer within the meaning of section 3(5) of ERISA, 29 U.S.C. § 1002(5), and was an employer in an industry affecting commerce within the meaning of section 501 of the LMRA, 29 U.S.C. § 142. MSG maintains its principal place of business at 801 Second Avenue, 5th Floor, New York, NY 10017.

8. Martin Shkreli d/b/a Alba Construction Co. is an individual residing in the state of New York.. At relevant times, Mr. Shkreli was an employer within the meaning of section 3(5) of ERISA, 29 U.S.C. § 1002(5), and was an employer in an industry affecting commerce within the meaning of section 501 of the LMRA, 29 U.S.C. § 142. Mr. Shkreli's principal place of business is 801 Second Avenue, 5th Floor, New York, NY 10017.

9. Alba Group, Inc. ("Alba Group") is a corporation incorporated under the laws of the State of New York. At relevant times, Alba Group was an employer within the meaning of section 3(5) of ERISA, 29 U.S.C. § 1002(5), and was an employer in an industry affecting commerce within the meaning of section 501 of the LMRA, 29 U.S.C. § 142. Alba Group maintains its principal place of business at 801 Second Avenue, 5th Floor, New York, NY 10017.

FIRST CLAIM FOR RELIEF

10. Plaintiffs repeat the allegations set forth in paragraphs 1 through 9 above and incorporate them herein by reference.

11. The New York City District Council Carpenters (the "Union") is a labor organization that represents employees in an industry affecting commerce within the meaning of section 501 of the LMRA, 29 U.S.C. § 142, and is or at relevant times was the certified bargaining representative for certain employees of MSG.

12. At relevant times, MSG was a party to, or manifested an intention to be bound by a collective bargaining agreement ("CBA") with the Union.

13. The CBA required MSG, *inter alia*, to make specified hourly contributions to the Funds in connection with all work performed in the trade and geographical jurisdiction of the Union ("Covered Work").

14. The CBA further required MSG, *inter alia*, to furnish its books and payroll records when requested by the Funds for the purpose of conducting an audit to ensure compliance with required benefit fund contributions.

15. At relevant times, MSG was owned and operated by Martin Skhreli.

16. At relevant times, Alba Group was owned and operated by John Mazza.

17. In February 2008, Martin Skhreli, individually, registered the trade name "Alba Construction."

18. Alba Group has obtained licenses and conducted other business under the name "Alba Construction."

19. At relevant times, MSG was operated out of 801 Second Avenue, 5th Floor, New York, NY 10017.

20. At relevant times, Alba Construction was operated out of 801 Second Avenue, 5th Floor, New York, NY 10017.

21. At relevant times, Alba Construction and MSG used the same telephone number.

22. At relevant times, Alba Construction and MSG used the same fax number.

23. At relevant times, MSG was corporations engaged in the construction business.

24. At relevant times, Alba Construction has been engaged in the construction business.

25. There was never an arm's length relationship between MSG and Alba Construction.

26. MSG and Alba Construction are alter egos, successors, and/or predecessors of each other and/or constitute a single employer, and each is liable for the others' unpaid contributions and related obligations to the Funds.

27. Pursuant to the CBA, the Funds requested that MSG and Alba Construction provide their books and records and allow the Funds to conduct a payroll audit covering the period October 25, 2008 through December 2010. MSG and Alba Construction refused to allow the Funds to conduct the payroll audit.

28. Under sections 502(g)(2) and 515 of ERISA, 29 U.S.C. § 1132(g)(2) and 1145, and under the Agreement and the documents and instruments governing the Funds, MSG, Martin Shkreli and Alba Group are liable to the Funds for contributions in connection with all Covered Work performed by their employees from October 25, 2008 through December 2010, interest thereon at the prime rate of Citibank plus 2%, liquidated damages of 20% of the principal amount of the delinquency, audit costs and all reasonable attorneys' fees, expenses, and costs incurred by Plaintiffs in prosecuting this suit.

WHEREFORE, Plaintiffs respectfully request that this Court:

- (1) Award judgment to Plaintiffs against MSG, Martin Shkreli and Alba Group, jointly and severally, in an amount to be determined at trial including all delinquent contributions, interest thereon at the prime rate of Citibank plus 2%, liquidated damages of 20% of the principal amount of the delinquency, all audit costs incurred by Plaintiffs and all reasonable attorneys' fees, expenses, and costs incurred by Plaintiffs in prosecuting this suit; and
- (2) Award Plaintiffs such other and further relief as is just and proper.

Dated: New York, New York
September 25, 2013

Respectfully submitted,

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